



FRIENDS OF THE CLEARWATER

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www.friendsoftheclearwater.org

June 29, 2012

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IDAHO FISH & WILDLIFE OFFICE

Brian Kelly
Idaho Sate Director
Fish and Wildlife Service
1387 S. Vinnell Way Suite 368
Boise Idaho, 83709

Dear Director Kelly:

Pursuant to the FOIA, we request information about lynx sightings, presence and sign on the Nez Perce and Clearwater National Forests. Since part of the Clearwater National Forest falls under the North Idaho Filed office, a copy of this request has been sent that office as well. We request all of the following:

All documents, including but not limited to faxes, letters, data general messages and other electronic mail, staff notes, staff logs, phone logs, meeting notes, surveys, and maps, concerning lynx sightings or lynx presence (sign) on the Nez Perce and Clearwater National Forests since the beginning of 2002.

We formally request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. Sec. 552(a)(4)(A)]. The organization "Friends of the Clearwater" is a tax-exempt, non-profit organization and will derive no commercial benefit from this FOIA.

The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on important policy issues. The requested information will be made available to the public through the Friends of the Clearwater office in Moscow, ID. University students, grassroots conservationists, journalists, scientists, and the general public use our office. Information given to the Friends of the Clearwater through the FOIA in the past has been used in press conferences and releases, media interviews, publications including our newsletter and those of other groups, and reaches a significant number of individuals nationwide.

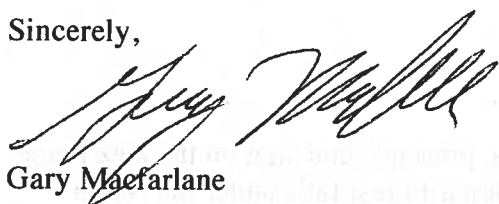
The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and that government agencies cannot impair this free access by charging duplication or search for FOIA information requests (Id. at 89). See also Judicial Watch v. Rossotti, 326 F.3d 1309 (D.C. Cir. 2003).

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In considering whether Friends of the Clearwater meets the fee-waiver criteria, it is imperative that the Fish and Wildlife Service remember that FOIA carries a presumption of disclosure and that the fee-waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as Friends of the Clearwater access to government documents without the payment of fees. As stated by one Senator, "[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). In interpreting this amendment, the Ninth Circuit has stated that the amended statute "is to be liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). The Ninth Circuit has likewise explicitly pointed out that the amendment's main purpose was "to remove the roadblocks and technicalities, which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA." Id.

If you have any questions, don't hesitate to contact me at (208)882-9755.

Sincerely,



Gary Macfarlane

cc: Northern Idaho Field Office